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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/267,176	03/12/1999	MICHAEL C. BURKE	32277.0200	6675

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EXAMINER
MORGAN, ROBERT W

ART UNIT	PAPER NUMBER
3626	

DATE MAILED: 02/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 November 2002</u> .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,3-14 and 18-34</u> is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1, 3-14 and 18-34</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1)☐ Notice of References Cited (PTO-892) 4)☐ Interview Summary (PTO-413) Paper No(s). _____ .

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)☐ Notice of Informal Patent Application (PTO-152)

3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . 6)☐ Other: .

DETAILED ACTION

1.   In the amendment filed 11/26/02 in paper number 14, the following has occurred: Claims

1 and 22 have been amended. Claims 2, 15-17 and 35-42 have been canceled. Now claims 1, 3-

14 and 18-34 are presented for examination.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   Claims 1, 3-14, 18-21 and 32-34 are rejected under 35 U.S.C. 103(a) as being

unpatentable over U.S. Patent No. 6,047,274 to Johnson et al., for substantially the same reasons

given in the previous Office Action (paper number 12) in view of U.S. Patent No. 6,021,402 to

Takriti. Further reasons appear below.

        (A) Claims 3-14, 18-21 and 32-34 have not been amended, and are rejected for the same

reasons given in the previous Office Action (paper number 12), and incorporated herein. Further

reasons appear hereinbelow.

        (B) Claim 1 has amended to now recite the step of "and wherein said optimal

consumption decision is calculated using an optimal cost curve derived from an optimization

algorithm applied to pricing data the forecast load; and

        delivering the optimal consumption decision to the customer via the network".

        As per this limitation, Johnson et al. teaches that Energy Provider submit bids to supply

power to end users (reads on "delivering the optimal consumption decision to the customer via

the network") as a result using the control computer (8, Fig. 1) the user selects the best Energy

Providers according to their lowest bids and amount of power offered (see: column 9, lines 3-14,

30-47, column 15, lines 15-27 and column 16, lines 28-36 and Fig. 1 and 11). In addition,

Johnson et al. teaches the unit or block approach in which a large user can control with some

precision how much power or natural gas they consume at any time or have highly predictable

"usage profiles" on a recurring basis (see: column 15, lines 48-52). Furthermore, residential

customers have fairly predictable "usage profile" patterns and would require less monitoring in

order to receive prior usage information (see: column 16, lines 10-24).

Johnson fails to explicitly teach the claimed optimal consumption decision is calculated

using an optimal cost curve derived from an optimization algorithm applied to pricing data the

forecast load.

Takriti teaches a computer implemented risk-management system for electric utilities that

allows a user to generate multiple load forecasts according to the variation in fuel prices to meet

the electric demand of customers at a minimal cost (see: abstract) The system includes a cost

function for generating electricity from a generator as well as solving a stochastic unit

commitment problem by assuming the given cost curve and independent fuel prices (see:

column 11, lines 54-62). The pricing data is used together with a cost curve and algorithm to

determine the lowest price of electricity needed to meet customers demand.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time

the invention was made to include the cost function as well as the cost curve as taught by Takriti

with computer-assisted sales system for utilities as taught by Johnson with the motivation of

allowing utility companies an opportunity to compete with each other and against independent

suppliers regardless of their geographic location at the same time benefiting the consumer (see:

Takriti: column 1, lines 26-35).

4.   Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No.

6,047,274 to Johnson et al. applied to claim 1 above, and further in view of U.S. Patent No.

5,974,369 to Radtke, for the same reasons given in the previous Office Action (paper number

12). Further reasons appear below.

(A) Claim 11 has not been amended, and is rejected for the same reasons given in the

previous Office Action (paper number 12), and incorporated herein. Further reasons appear

hereinbelow.

5.   Claims 22-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent

No. 6,047,274 to Johnson et al. in view of Official Notice, for substantially the same reasons

given in the previous Office Action (paper number 12). Further reasons appear below.

(A) Claims 23-31 have not been amended, and are rejected for the same reasons given in

the previous Office Action (paper number 12), and incorporated herein. Further reasons appear

hereinbelow.

(B) Claim 22 has amended to now recite the step of "said optimal consumption decision

calculated using an optimal cost curve derived from an optimization algorithm applied to pricing

data the forecast load".

As per this limitation, Johnson et al. teaches that Energy Provider submit bids to supply

power to end users (reads on "delivering the optimal consumption decision to the customer via

the network") as a result using the control computer (8, Fig. 1) the user selects the best Energy

Providers according to their lowest bids and amount of power offered (see: column 9, lines 3-14,

30-47, column 15, lines 15-27 and column 16, lines 28-36 and Fig. 1 and 11). In addition,

Johnson et al. teaches the unit or block approach in which a large user can control with some

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Johnson fails to explicitly teach the claimed optimal consumption decision is calculated

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Takriti teaches a computer implemented risk-management system for electric utilities that

allows a user to generate multiple load forecasts according to the variation in fuel prices to meet

the electric demand of customers at a minimal cost (see: abstract) The system includes a cost

function for generating electricity from a generator as well as solving a stochastic unit

commitment problem by assuming the given cost curve and independent fuel prices (see:

column 11, lines 54-62). The pricing data is used together with a cost curve and algorithm to

determine the lowest price of electricity needed to meet customers demand.

The obviousness for combining the teachings of Johnson and Takriti are discussed in the

rejection of claim 1, and incorporated herein.

Response to Arguments

6.   In response to the Applicant's arguments, it is respectfully submitted that the Examiner

has not apply prior art to the features of amended claims 1 and 22 at the present time. As such,

Applicant's remarks with regard to the application of Johnson et al. and/or Official Notice to the amended claims are addressed in the above Office Action.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Morgan whose telephone number is (703) 605-4441. The examiner can normally be reached on 8:30 a.m. - 5:00 p.m. Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (703) 305-9588. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.
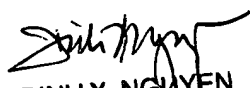
Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703) 308-1113.

RWM
rwm
February 3, 2003

DINH X. NGUYEN
PRIMARY EXAMINER